

ONEIDA COUNTY BOARD OF ADJUSTMENT – PUBLIC HEARING  
NOVEMBER 15, 2016

Chairman Harland Lee called the meeting to order at 1:00 P.M. in accordance with the Wisconsin Open Meeting Law.

Roll call of Board members present: Mr. Rossi, “here”; Mr. Albert, “here”; Mr. Bloom, “here”; Mr. Ross, “here”; Mr. Hammer, “here”; and Mr. Lee, “here”.

Members absent: Guy Hansen

County staff members present: Pete Wegner, Assistant Director and Julie Petraitis, Program Assistant

Other individuals present: See Sign in Sheet.

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Chairman Harland Lee stated that the meeting will be held in accordance with Wisconsin open meeting law and will be tape-recorded and sworn testimony will be transcribed. The Board of Adjustment asks that only one person speak at a time because of the difficulty in transcribing when several people are talking at once. The Board of Adjustment is made up of five regular members and two alternates, both alternates being present today, who will take part in the hearing until the public hearing is closed, at which time one of the alternates will not take part in the deliberation. Anyone wishing to testify must identify themselves by name, address, and interest in the appeal and shall be placed under oath.

Chairman Harland Lee stated that the Board will hear testimony from the appellant/agent first and then the opposition. Following that, the appellant and opposition will have an opportunity for rebuttal and then closing statements. The public hearing will then be closed from further testimony. Consideration and additional questions can be asked by the Board members of the appellant or the opposition during deliberations. You may stay for the disposition of the appeal. Upon conclusion of the deliberation of the Board, the Chair will call for a motion and a second, and a roll call vote will be taken for the decision of the Board.

Chairman Harland Lee swore in Pete Wegner and Michael Krutza.

Secretary Phil Albert read the notice of public hearing for Appeal No. 16-004 of Michael Krutza, owner, appealing the denial of a zoning permit for a boathouse with deck on top contrary to Section 9.94 A 2 (d) (2) of the Oneida County Zoning and Shoreland Protection Ordinance. These activities are contrary to the Oneida County Zoning and Shoreland Protection Ordinance, as amended July 15, 2016. The property is located at 8207

Doolittle Road, further described as Lot 13 Doolittle Bardens Kawaga Shores, Section 22, T39N, R6E, PIN MI 4320, Town of Minocqua, Oneida County, Wisconsin.

The Notice of Public Hearing was published in the Northwoods River News on November 1 and November 8, 2016. Mr. Albert provided the proof of publication; and noted that the media was properly notified.

The Oneida County Board of Adjustment Rules of Procedure, Section 178.05(12), Chapter 17, Oneida County Code of Ordinance, provide that a timely appeal shall stay all proceedings and furtherance of the action appealed from, unless such stay would cause imminent peril to life or property.

The Board of Adjustment will conduct an onsite inspection of the property involved in this appeal beginning at approximately 10:00 am prior to the hearing. Pertinent property boundaries and locations of existing and proposed structures shall be clearly identified. A representative or the appellant must be present. The inspection shall be open to the public.

Copies of appeals and related documents are available for public inspection during normal business hours at the Planning and Zoning Office, Oneida County Courthouse, Rhinelander, WI 54501. The Oneida County Zoning and Shoreland Protection Ordinance is available on the Internet at <http://www.co.oneida.wi.gov/>.

Secretary Albert stated that all media outlets were notified of the public hearing and the onsite inspection was conducted at approximately 9:50 – 10:15 a.m. on November 15, 2016. All Board members, with the exception of Guy Hansen, were at the site along with owner, Michael Krutza and Jeff Krueger representing the Zoning Department.

Prior to the public hearing the Board conducted an onsite inspection at 8207 Doolittle Road, further described as Lot 13 Doolittle Bardens Kawaga Shores, Section 22, T39N, R6E, PIN MI 4320, Town of Minocqua, Oneida County, Wisconsin. Observations by the Board: The property boundaries were marked and the highway/road right-of-way are not applicable in this case. Proposed construction was marked and measured at the time of the onsite for the 23' x 35' boathouse. Topography: sloping from the home/garage down to the lakeshore. Erosion: none was observed. Existing structures: there are some existing structures within the 75' setback from the ordinary high water mark including a swing set, children's slide, a flag pole and a storage shed. Other observations: there is a permanent pier in place in front of the proposed boathouse and pictures were taken and will be submitted as Exhibit A showing the property and the proposed location.

In terms of any questions or discussion regarding this application and denial whether the 2008 application permit has any bearing on the current permit application and whether the new ordinance as proposed after Act 55 whether it allows decks on the roof of boathouses. The other comment is that Mr. Albert feels he should recuse himself from any further comment or discussion as part of the past working with Mike Krutza both at the Department of Commerce and in other activities. Mr. Albert is recused and Mr. Hammer will take his place.

Chairman Lee again explained the procedures that will be followed for the hearing.

Mr. Krutza asked the Board if they had copies of the pictures he submitted with his appeal.

Mr. Lee indicated that they do and that Jeff Krueger took some more pictures during the onsite if he wanted to look at those.

Mr. Hammer asked for clarification of the location of the proposed boathouse.

Mr. Lee stated that if you are looking at the Lake the proposed location is on the left (east) side of the pier.

Mr. Krutza: Thank you. I will try the best I can to share my story as well as the reasons I think are valid to approve the initial request. Part of it goes to the past year the Legislature and the DNR, through NR 115, created a new set of rules. Through all of the reading that I've done and heard that the Legislative intent was to provide consistency and predictability throughout the State and the other part of that was that it was to establish, I don't know if the word is a floor or a ceiling, below at which the local authorities had the authority to be more restrictive. And I also understand that the code, so we're clear, as I understand the code that was in the letter to me; it says the viewing area defined is relatively free of vegetation that allows a reasonably unobstructed view of the shore from the principle structure. By, I think, that definition you can, which is from the principle structure, you can look and it is relatively free of vegetation and it is a relatively unobstructed view of the shore. There are only six (6) trees; actually from the line of site from the house there is only one tree. That is the only, I think as I understood denial, there is no appeal that I am requesting with regards to setbacks or any other things just clarifying the definition of a viewable corridor. I'd like to group my comments in three areas. One is 9.94, secondly is a pattern of behavior between the County and me since 2008, and three is unintended consequences.

As I just said the relatively free of vegetation that allows a reasonably unobstructed view seems imminently clear to me that the proposed site does that. It is relatively free of vegetation. The code did not say it has to have the fewest trees or the most open area and it, as I understood it, by County interpretation says it has to be absent trees or the most open area. From my judgment that would be inserting the reality of intention of a code and undermines what a code is and in fact makes the County act in a much more restricted way than the code authorizes.

The second area was the pattern of behavior. First of all let me compliment the County Staff. I've got to know them all too well. I got to see Pete's office and his bucks and his bears. I would say that the experience I had, although flawed in the decision, the experience was respectful and kind and engaging. We had several conversations over this. I think if I could read Pete's behavior at the time, he was equally stressed with the situation. But if we go to the pattern of behavior the 2008 permit I think is relevant to the extent that while the laws have changed they have only become more relaxed. A viewable corridor is more relaxed today than it was even back then. Even with the new NR 115 definition for viewable corridor, I believe, I don't know if the County passed it so it may not be relevant but it is even absent of the words 'relatively free of vegetation; access and viewing corridor – a strip of vegetated land that allows safe pedestrian access to the shore.' So 2008, in your judgment, may or may not be relevant. It is to us for a couple of reasons. One is it was a time when we were deciding to build a boathouse but at that time you couldn't put a flat roof on it so we simply held off. That was our basis for holding off.

We subsequently made other decisions as a result of what we understood was an approved site. My question, and I wonder the accountability, what accountability does really Government have to the fidelity of the 2008 decision? Is it well, it doesn't really matter, we simply ignore it? Because the only thing that's changed is that the regulations, as I understand it, got more relaxed.

Mr. Lee: Let me just ask you a question about that 2008 thing. This was a permit that allowed you to build a boathouse?

Mr. Krutza: Back then?

Mr. Lee: Yes.

Mr. Krutza: Yes.

Mr. Lee: And that little shed there is what you call a boathouse now?

Mr. Krutza: No, that was done before, probably fifteen (15) years ago; which I didn't get a permit for.

Mr. Lee: So you never built a boathouse?

Mr. Krutza: No. As I was sharing, and somebody asked when we were there, they were noticing the stake and Jeff...

Mr. Hammer: I asked that question.

Mr. Krutza: Jeff said that is the stake for the one we initially approved which we chose not to build.

Mr. Lee: Are you aware that if you do not fulfill the permit within two years it's done?

Mr. Krutza: Yes.

Mr. Lee: It no longer exists.

Mr. Krutza: Correct. I am not suggesting that I'm pulling that as the approval, what I'm suggesting is the pattern of behavior the County approved that site under rules that were probably more restrictive at the time. The third area, and again this may or may not be relevant to you, but it is in the area of unintended consequences. It seriously erodes the lake view for the neighbors. The proposed site essentially puts, if you put the boathouse there it takes away their view. It would seem to be an unnecessary harm to the community. While I didn't act on that decision of 2008 it has been, all along, my intention to wait and see if the County was going to adjust for the flat roofs. So I did rely on that decision that it was the viewable corridor and made subsequent decisions which may or may not be relevant here but it was for us. We installed the irrigation system and as you see in my other analysis the estimated cost to make the move from where I'm desiring the request is to the proposed site probably 16

to 20 thousand dollars because we have to tear out the existing permanent pier and all the costs that I have already enumerated.

Mr. Lee: Are you aware that your flag pole and jungle gym are actually in violation?

Mr. Krutza: Well, I didn't know that until Pete had shared the...

Mr. Lee: They are.

Mr. Krutza: Yes. So I understood. There are a couple things, one is I have to relocate both, I suspect, and there was another pier there and there is only allowed one pier. I understood those as the conditions. The third is unintended consequences: If the policy, if the interpretation stands it's really a message for homeowners to get rid of trees. If the only condition is to count the number of trees to make a decision then one has to get rid of trees or you hope the trees go down or die. That would just seem so counter intuitive to what, at least what I would like, to maintain the environmental aspect of trees. It just seems so counter intuitive to say 'you've got to go here because it's the most open site so there's no trees' so the implied direction is, get the word out folks, you better not have any trees. Which would simply be an unintended consequence I can't believe would really be the intention. It wouldn't be my intention. I can't believe it would be the intention of the Legislature or the County. The decision from this side of the table seems easy. It may not be from yours but from this side it seems easy. The code is, as it said, relatively free of vegetation; if it allows reasonable access with an unobstructed view; it does. So I'm wondering what else could have been done other than no trees. If we can't rely on that interpretation it tends to diminish my hope and trust whether there is equity and fairness in interpreting the regulations. It may or not be correct but from this side of the table that's how it feels. I think any or all, any of those three or four are reasons to grant the initial request. Any questions?

Mr. Lee: When we consider this later there are three areas that we have to look at and one is, these are in the form that you filled out. One is a hardship, second is physical property limitations and thirdly is the public interest. It might help your case if you could address each one of those three in how do you feel about those because those are areas that we are going to consider as we decide this.

Mr. Krutza: At the risk of rereading all of this, I tried to state it exactly...

Mr. Lee: I know, but I want to hear now. You can repeat it all again and this is part of the record, that's true, but if you have something new that you want to add to that or whatever we'd be glad to hear it.

Mr. Krutza: I'm looking at the three areas and, again, I've already stated the unique property limitations. It goes to simply the definition of what the basis of the denial was, is it a reasonably unobstructed view and my comments suggest, they state that there is a reasonably unobstructed view.

Mr. Lee: Is the other site, that the County has identified, that is even more clear.

Mr. Krutza: Sure. Which is, you could grant that, which at that point, which is my point earlier; does the County have a right to become more restrictive? I would argue that it moves beyond what the intention of Legislature and the Court is. It wasn't intended to be more restrictive. If you say nothing, well. Because then the message is there really isn't a viewable corridor; it's just no trees.

Mr. Hammer: Can we back up for just a second and may I ask a question?

Mr. Lee: Sure.

Mr. Hammer: When you bought the property what was it like? What was the shoreline like? Was it similar to the way it is now?

Mr. Krutza: There was probably more trees where...

Mr. Hammer: Where it is currently open?

Mr. Krutza: Yes. It's been twenty (20) years. It was a family cottage. Four families lived together and my memory is, as I shared with somebody, the one birch is dying and the one...

Mr. Hammer: You shared that with me, yes.

Mr. Krutza: The one lone tree is there and there are two trees that are dying that are in this whole corridor so I'm down to four trees. It has been essentially the same for the twenty plus years.

Mr. Hammer: So there were maybe more trees in what I viewed as that open area next to where the playground equipment is over to where that white pine that is on the shore is?

Mr. Krutza: I don't recall we ever had any trees where the flag pole is.

Mr. Hammer: Okay, and then from there over toward where the stake was?

Mr. Krutza: I think the only change to the whole shoreline, that I recall, is if the storms come through or the trees die. Three or four have gone down.

Mr. Hammer: Okay.

Mr. Bloom: Mr. Krutza, I have a couple of questions and I'm going to go back a little ways. I'm a little confused. Today I heard that you wanted to build a 23'x35' boathouse. In your application you want a 20' length by 30' width.

Mr. Wegner: That was from 2008.

Mr. Bloom: That goes back, what about these drawings?

Mr. Wegner: It's changed.

Mr. Lee: I think that might be the 2008 application, John, if you look at the date on the front.

Mr. Bloom: Alright, I understand.

Mr. Wegner: And then the new one is larger.

Mr. Bloom: I understand what you want now.

Mr. Krutza: So the uniqueness of the property is, without boring you, is the definition of the code is complete compliance and authorizes for the location where we proposed. I don't know, as I said the other uniqueness's of the property, as stated in my actual appeal is the fact that we have no actual Legislative or the regulatory history where the County agreed. The County essentially agreed with the same thing when there are more trees, where there actually were probably two or three more trees at that time. And, as I said earlier the viewable corridor has gotten relaxed since that time period as I understand it. So at that time, from that period, sitting on this side I was quite perplexed. How could, basically, the more liberal definitions today under the law and the code refuse the permit that was once? I'm not hanging my hat that I was claiming that I wanted to retract the '08 permit I was saying that I recognized a path between the limits. I think the other element that Pete and/or Jeff kept, I think in part reassuring me as they sorted through it, all the other elements of a viewable corridor, maybe I didn't understand Pete, but to permit a boathouse was one that helps define a viewable corridor which has long been there. I don't recall when it was put in there it was fifteen years or more. On page 2, the viewing area which we've already talked about the relatively free of vegetation but then the accessing viewing corridor as I'm understanding was the definition, I think I got from Pete, that whether the County has inactivated a Bill this is the proposed regulation so it may or may not bind you guys. But that definition is, I think, even more inviting because it says just a strip of vegetation and allows safe pedestrian access. Nowhere in here, in any of the writings or the meetings did I hear anything that says "most open area". Either in my contact with the DNR or, there is nothing. They clarified it in the code as the intent. I guess I've stated all of those things. I think when I was summarizing this it dawned on me that 'could it be as simple as all we're doing is counting trees'? There are no trees over here (pointing at photo) but there were probably fifteen over here. There are now six. Two are going to die and so do I come back in two years after, God willing, a couple storms come through and take them out; which just seems contrary to what the code says and simply just seem illogical. The second part of the appeal was the harm to public interest. The, excluding myself because I'm assuming my interests are either I don't know if they are considered or not. I think the one overriding harm to the public interest is the proposed site from the County just about brought tears to the eyes of the neighbor when he was standing down there looking at he said 'what are you doing?' I said 'well, the County has denied the site we wanted and they said this is the only spot' and then the conversation went. One can reasonably visualize, I don't have a print or a picture to show you, one could reasonably visualize the effect of putting a structure where the County thinks it should go right now. That would be the external harm to public interest, I think. Other than that I relied, as I shared already, I relied on the presumed approved site from 2008 and did some improvements with the irrigation system and added some investments at this site. And if that site is not acceptable then I have to take out a pier and resurrect a new one and all of those things which I tried to quantify reasonably what I think those costs are. I don't, by the request, I don't pose any public harm to anybody else. It is almost the contrary. The County's choice causes public harm to the neighbor.

I think the last one, Mr. Chairman, you said was to go through unnecessary hardships. I've outlined what I think the costs would be if I had to make those changes and it is 16 to 20 thousand dollars to move it to the site the County has approved which is really unfortunate because of Oneida County's '08 decision.

Mr. Lee: That's it?

Mr. Krutza: I'm good unless you have questions.

Mr. Lee: Any questions?

Mr. Ross: I'd like to hear Pete's comments first.

Mr. Krutza: May I comment after Pete's done?

Mr. Lee: Yes. We'll go back and forth and try to keep it informal.

Mr. Wegner: Remember when I told you on D-day I had to be the bad guy?

Mr. Krutza: You can still smile and be reasonable.

Mr. Wegner: First I'll address his three concerns, the first one being the view corridor. I, myself, do not like the definition that is in NR 115. I think you have to consider that because technically that was, it's law. It was July 14, 2015. The problem I have with the definition it says accessing viewing corridor but when you read the language that defines that, it only talks about access to the shoreline. Where it talks about view corridor, if you read further down in NR 115, it talks about you are able to create an access and view corridor provided that the combined width of all access and viewing corridors on a riparian lot or parcel may not exceed the lesser of 30 percent, which obviously Act 55 changed it to 35. But it is telling me that you can create something. If I were to send somebody out to that property and Mike would ask 'I want to create a view corridor, where can I put it?' Just due to the lack of vegetation he already has a view corridor. If you're counting trees, I guess we are in a way, because even though there are seven trees here there is nothing here (pointing at photo). So when you're talking about being relatively free of vegetation, and he's right it doesn't say absent or the least vegetation, but when you already have a sparsely vegetated lot that area is relatively free automatically it has to be in this area.

As far as the view corridor then, in 2008, and now the pictures that I have with the permit, unfortunately only show that one side of the property. It doesn't show what was there before. If you look at aerial photos (showing the Board) this is what you saw today, basically. It is really hard to see.

Mr. Lee: I can't even pick out which one was...

Mr. Wegner: So, I can say that as far as the location and the issuance of that permit, I personally don't agree with it. Right or wrong, and I did talk with Jeff about it; based on his onsite of that property and the permits that were submitted, to me it appears that it shouldn't have been allowed in that location mainly because his onsite itself shows a view corridor over her (pointing at picture) and the existing boathouse ten feet over from there.



Mr. Rossi: Are you talking about that shed?

Mr. Lee: It is hardly a boathouse. It may meet the definition of a boathouse but it is just a shed in my view.

Mr. Wegner: And then also, in this photo you can't even see this shed looking from the home. So I have to deal with that. We've been going back and forth, even today, on boathouses. When it comes down to it, I told Mike, there might be some issues with the language. I think that if you read further it covers itself because to create a view corridor you are removing trees. The area is void of trees and how could one define this as a view corridor when this is completely open (looking at photos)? Unfortunately I think mistakes do happen, in all Departments, and if you look he's got the view corridor over here and showing the shed there. As far as establishing it, he stated in his appeal that it has been long established as the view corridor. I think I can argue that it has changed because this area, with the creation of the beach, the placement of the play set has really established this more as the view corridor now or a viewing area. You wouldn't put a play set outside of the viewing area where you couldn't see it from the home.

As far as, again on the 2008 permit, I wouldn't agree with that location. I know he's not asking for the same thing now; it's 34% bigger, it has a flat roof with a deck on it, which as of last week that's changed. There obviously was a misunderstanding with what the intent of Act 167 was as far as allowing someone to use a flat roof as a deck versus allowing somebody to build a deck on top of a flat roof boathouse. I just received clarification on that Monday.

I know he relies on this and he and I both discussed it, like you got a permit in 2008 that shows it right over there because there is a pier there, there's a shed there but there also was a pier on the opposite side so that kind of split it apart. In 2009 he got a permit for a walkway and all walkways have to be in the view corridor and that is...

Mr. Lee: Right straight down from the house.

Mr. Wegner: Yes. And in language changes, I can tell you since 2008 we've amended our Ordinance twenty (20) times. Has that had an effect on people's wallets, people's lives, people's families; definitely. We went from only being permitted structural alterations to complete replacement. People didn't buy properties because they found out they couldn't do something to it. That's not uncommon, unfortunately. I can tell you the language we have to adopt to comply with NR 115, ironically, is going to be more restrictive than what we have in our ordinance today. You look at me like, 'what is that?' Zero to 40 you can't have any additions. Right now we allow additions in zero to 40. Additions cannot happen until you are at 35 feet and it is limited to only 200 square feet. Now you can double the size of that home between 40 and 75' – the footprint. So, there are changes that are occurring. Without rambling on, just again, if the vegetation is sparse to begin with and there is an area that exists that is totally free of vegetation; by removing the remaining vegetation, for the placement of a boathouse, is in direct conflict with the intent in the language in NR 115 which states "the County shall regulate the removal of vegetation in shorelines. It is to protect water quality, fish and wildlife habitat and natural scenic beauty, and to promote, preserve and restore native vegetation." That is stating to keep as much of the existing vegetation that you can.

As far as the three criteria, I don't believe there is a physical property limitation because there are alternative sites that he could place a boathouse. The alternative could also be not having a

boathouse. He's had reasonable use of the property for twenty plus years without a boathouse. Finally, it would be contrary to public interest because it doesn't meet the criteria for a variance. Because it doesn't have a physical property limitation and it does not deny reasonable use of the property, based on the plus twenty years of using it already without a boathouse.

Mr. Rossi: Pete, can I ask you, I heard today that the placement of a permanent pier is in the view corridor. Does that remain that way?

Mr. Wegner: Our Ordinance now, today says that a boathouse, a pier, a walkway has to be in the view corridor.

Mr. Rossi: Okay. Then a permanent pier wouldn't fit into that?

Mr. Wegner: No.

Mr. Lee: Norris, you said you had a question?

Mr. Ross: I think it's important that the appellant here knows that our decision, which you were probably going to say, is based upon those three criteria and, I think it's a stretch, all three must be met for us to. We're here to do a variance we're really not here to argue about some of the issues that have been presented. The question I had is back to the view corridor, again, and that is where does the old concept that it is to view out of the main dwelling. Is that still a logical criteria?

Mr. Wegner: Under today's Ordinance, yes but as he mentioned by definition it just says a vegetative path or a strip of vegetated land that allows safe pedestrian access to the shoreline. But by default when it talks about the creation of a view corridor it says you are removing vegetation to get a view of the Lake.

Mr. Ross: I ask you because this one is pretty obvious where (more than one person talking here) you look out the deck of the house and you look at the walkway that is going to the lake.

Mr. Wegner: To remove any more trees on that property would be in direct conflict with the intent of NR 115.

Mr. Lee: You pretty well interpreted this the same way over a period of years?

Mr. Wegner: Well, 2006 to 2008 there was a lot of crazy things going on with boathouses, I can tell you that. Hence the reason we changed and limited them to 20' width. View corridors are being, people are placing boathouses and creating their view corridor including their entire lot, basically just an estimation of placement. So, it's changed. As far as the location of it, the intent has always been the same.

Mr. Lee: I guess what I'm getting at is you have a pattern of interpretation that goes back a number of years and has been consistently applied?

Mr. Wegner: Yes. Based on our language today, definitely yes. That is why I don't necessarily agree with this location. I'm supposed to sign off on boathouse permits. Sometimes it gets busy.

Mr. Lee: I think one of the things is, you know, you talk about public interest. The Ordinances that are created by the County Board are in the public interest themselves by definition. So you have to have a pretty good case to go against that ordinance, which was created in the public interest. One person's view hardly, in my mind, goes against that.

Mr. Ross: I guess another question is when we finally get to the hardship question, because we go through those three questions, and I guess in just having walked on the property the first time and seeing the permanent pier I can't even imagine why one would want to move it. If you were to put the boathouse over on the other side in what we are thinking of as kind of the clearer area, doesn't deny access to that. You could just move it over and put, in other words I don't see the connection between the hardship that's attempted to be created here and actually having any hardship in terms of financials. Put the boathouse in the other spot and everything is still useable, it seems to me.

Mr. Lee: Actually you could say that is a self-created hardship.

Mr. Ross: Well that's true.

Mr. Lee: Any other questions? Do you have any response to what you've heard here?

Mr. Krutza: Yes, I do. The appeal is an improper conclusion or definition of 9.94. My appeal is simply that the County, which I accept, that its worded that there is no harm to public interest. But the County says it's relatively free of a viewable corridor, regardless of, I know Pete was talking about past and even past which is maybe why the State made changes because past behaviors needed to be adjusted. So the regulation, as it sits today, is pretty narrow to say 'is the corridor a reasonably unobstructed view of the shore from the principle location'. That is the singular basis for denial and that is my singular basis for an appeal.

Mr. Rossi: I think that one of the bases for denial is that it does not meet hardship. You have to meet those three, all three, it does not meet hardship.

Mr. Krutza: Other than the decision forces me to spend \$20,000.

Mr. Ross: For?

Mr. Krutza: To relocate, because I have to move the irrigation system and take up the pier.

Mr. Ross: Why would you have to take up the pier?

Mr. Krutza: Because it appears I'm going to another location I'm going to have to put a pier by the boathouse. Permitted or otherwise I can't have two piers.

Mr. Rossi: Unfortunately this Ordinance does not consider expense under the provisions and it never has.

Mr. Krutza: So what is the remedy? What is the remedy when it is simply an improper, in my case, what I'm claiming is an improper definition. An improper conclusion as to the message of the regulation.

Mr. Ross: The remedies for a lot of these things were also taken away at the same time that we had to refer back to NR 115. In the past we might have considered mitigation or some other alternative to solve your problem. Those tools aren't available to us anymore.

Mr. Hammer: In the past we could say "okay, re-vegetate that shoreline that is clear and we could change the view corridor". Is that right, Pete?

Mr. Wegner: In the past, yes. Could we do it today? I really don't know if that is a yes or no answer.

Mr. Hammer: Yes, that is the dilemma that we're in. We're in with a Statute that maybe has caused more trouble than it was meant to improve. And again, in the past, we get into this issue with trees. If you re-vegetate the area that is clearly open, personally I see that as the view corridor between the flag pole and the old stake. That's what my head tells me. That's a view corridor. You look back at the house that's where it is. Again, in the past we could say 'okay, re-vegetate with native vegetation' and boom, you could move it. Am I right, Pete? We can't do that now...

Mr. Wegner: That's the biggest difference between the 2008 application and today. He was required to mitigate so any little deviation or misunderstanding where the view corridor was, it was taken care of by adding vegetation. Now we cannot require...

Mr. Hammer: In my thought on this is that we end up with like a 70' viewing corridor, if we would do what it is that you wanted because there is the existing, with clearly from my perspective that is a view corridor, now you've got the other section that you're going to remove vegetation, grade, whatever but that's the problem that we've got. I don't think it's surmountable because we can't violate the State Statute and make you mitigate.

Mr. Krutza: But you could simply comply with the State Code which the only issue was defining the view. If this Board concludes that the County definition is irrespective of the Code and all that matters is the number of trees, it isn't the definition that's in the code, which ours meets "a reasonably unobstructed view. But if the Board says 'no we believe it's the other one' then it's simply a count of trees and the message your sending is for all of those who have potential permits; the only thing they would argue with is the fact that you're defining a corridor based on your interpretation and not the Codes and there may be another two or three elements to the appeal. It is simply the definition of "we just disagree" that...

Mr. Bloom: Mr. Krutza, I think that by this photograph right here, I think the Board all took a look at that, but this actually spells out what you believe is the viewing corridor because you have your glider here, you have your chairs set up here, obviously that is where you look to view the Lake.

Mr. Ross: You see the Board of Adjustment is set up to consider variances for a whole lot of things. We have the same criteria for all of them, whether it is a viewing corridor or setbacks or can we do this or that. We're bound to follow those criteria and what goes into those criteria is pretty well defined for us. We're kind of influxed.

Mr. Rossi: I'd like to get back, again, to the three reasons to grant a variance and the last one, hardship. I can't get around that or justify a hardship. In this case you've been there twenty-some years and have a shed there for storage and gasoline and without a boathouse for that length of time. You aren't restricted from reasonable use of the property, according to the hardship. You can't meet all three of them.

Mr. Lee: Pete, do you have any other comments you want to make?

Mr. Wegner: Just one more regarding the definition or consider the definition. This is not considered a viewing area (pointing to photo) and you know you're allowed a viewing area and its got to be within your vegetated buffer zone. If you put it here (pointing at photo), where is the vegetated buffer zone? There isn't any.

Mr. Hammer: And we can't make him mitigate by creating that vegetated buffer zone.

Mr. Wegner: I don't know the answer but if I would say yes and you did I think there are grounds for somebody to appeal because it clearly states in NR 115 that you cannot require vegetation and it won't be Oneida County that appeals it and it wouldn't be the DNR, because they are not allowed to appeal.

Mr. Krutza: I offered mitigation in my appeal. That doesn't matter.

Mr. Lee: Any other final comments? Mr. Krutza?

Mr. Krutza: I probably have said them all. I think if the Board ends up in a spot of planning by the number of trees you will have (more than one person talking here).

Mr. Lee: Any other questions

Mr. Hammer: I guess I would like to ask Pete something. Is there a chance, I know you've worked with the Zoning Code Administrators in dealing with this, is this issue something that other Counties are running into in terms of the vegetation and the boathouses and all that?

Mr. Wegner: Not as much as we are.

Mr. Hammer: Okay.

Mr. Wegner: Is it going to change? I believe it will be. There was a resolution to the County Board today advising the Planning and Zoning Committee to create an Ordinance Amendment to limit the size to 480 square feet. It failed but I can tell you that everybody on the County Board agreed that 1008 square feet was way too much.

Mr. Hammer: Okay.

Mr. Wegner: What I'm getting at is the average size boathouse of the 28 Counties I looked at is 349 square feet. They were proposing 480. Just by the size alone you lessen the concern of the location because of the width.

Mr. Hammer: But is there a chance to get something back into the Statutes that allows mitigation? I mean, is anybody looking at that? Because that strikes me as being...

Mr. Wegner: The four things or five things that I'm involved with right now are lake classification, permitting, I can't think of the other two. I'm in a zone to changing my language to comply with today...

Mr. Lee: Okay, I'm going to close the public hearing at this point and the Board will deliberate the case before us and arrive at a decision. So, gentlemen...

Mr. Rossi: As I see it the criteria cannot be met, all three of them. The hardship is the hardest one to get around and it cannot be met.

Mr. Lee: Let me just read these things for the record. For a use variance: no reasonable use of the property can be made without a variance. Well, reasonable use of the property has been made for an extended period of time. For an area variance: compliance with the Zoning Ordinance would unreasonably deny use of the property for a permitted purpose or conformity with the ordinance would be unnecessarily burdensome. Physical Property Limitations: the hardship is due to unique physical limitations of the property; dimensions, topography, geologic formations, soil and so forth not due to the circumstances of the Appellant, which is in bold print. Public interest: a variance granted under this appeal will result in no harm to the public interest as expressed by the general and specific of the zoning ordinance.

As I stated before I think that when I look at the ordinances they are created in the public interest.

Mr. Ross: I think the three criteria, which is we typically go through the only one that I think had any merit is the public interest. Only in the sense that this neighbor submitted this thing so we at least have that in the record. I don't see one and three at all coming close. We need all three to approve a variance. I don't think it is even a close call.

Mr. Bloom: I totally agree with Norris' assessment.

Mr. Hammer: So do I.

Mr. Lee: Just one other comment I guess that I would make. You talk about a reasonable person making a reasonable decision. Anybody who walks down there and takes a look at your shoreline and you ask them 'where is the viewing corridor; It's right there, right straight ahead of you that open space.' It's almost like a no brainer. I think if there is no further discussion I need a motion from somebody.

**Motion by Norris Ross, second by Ed Hammer to deny appeal #16-004 of Michael Krutza, as the three criteria cannot be met. With all members voting "aye" on roll call vote, the motion carried.**

**Motion by Harland Lee, second by Bob Rossi to have the written decision done by November 18, 2016. With all members voting “aye”, the motion carried.**

**2:05 pm - The meeting was adjourned on a motion by Ed Hammer and second by Harland Lee; and all members voting aye.**

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Harland Lee, Chairman

Phil Albert, Secretary